

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC. et al.,)	
)	
Plaintiff-Counterclaim Defendants/)	
Third Party Defendants,)	No. 3:07-cv-01600-ARC
)	
v.)	(Judge A. Richard Caputo)
)	
LEACHCO, INC. et al.,)	(electronically filed)
)	
Defendant-Counterclaim Plaintiffs/)	
Third Party Plaintiffs.)	

RESPONSE TO RULE 56.1 STATEMENT

1-2. Admitted.

3. Denied. Claim 1 has no “pertinent part.” The complete text of the claim is set out in columns 4 and 5 of the patent. Exhibit 2.

4. Admitted that the Court made the quoted ruling. It does not become “conclusive,” and remains subject to reconsideration, until a final judgment is entered.

5. Admitted that the crown is “not shaped like a semi-circle” because it has square corners at its upper contour. The balance of the allegation is denied, because the crown of the accused product has a semi-circular base. Exhibit 1, ¶ 10; Exhibit 6.

Admitted.

7-13. Denied. Exhibit 1, ¶¶ 14-19.

14-15. Denied. The Plaintiff has wrongfully withheld records and refused to cooperate in pretrial discovery aimed at testing the truth of these allegations. Exhibit 14, ¶ 2-7.

Additional Material Facts

16. Putting aside the semi-circular crown element of claim 1, the Babyage Cozy Comfort pillow includes each of the remaining elements of claims 1, 2 and 3 of U.S. Patent No. 6,76,934. Exhibit 1, ¶ 8, Exhibits 7-10.
17. The crown of the Babyage Cozy Comfort pillow is equivalent to the semi-circular crown element of claim 1 of U.S. Patent No. 6,76,934, assuming that this element is not literally satisfied by the pillow. Exhibit 1, ¶¶ 9-13.
18. Babyage has offered for sale and sold the Cozy Comfort pillow within the United States since July 13, 2004, the issue date of U.S. Patent No. 6,76,934. Exhibit 1, ¶ 6-7, Exhibits 2-3.

Respectfully submitted,

s/ Gary Peterson

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Attorneys for Defendant and Counterclaim
Plaintiffs

CERTIFICATE OF SERVICE

I certify that I electronically transmitted this document to the Clerk using the ECF System so as to cause transmittal of a Notice of a Electronic Filing to the following ECF registrant:

Andrew J. Katsock, III

Attorney for Babyage.com, Inc. and John M. Kiefer, Jr., on October 22, 2008.

s/ Gary Peterson